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Letter dated 10 March 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 28 January 2004 (S/2004/91). The Counter-Terrorism Committee has received the attached fourth report from Guatemala submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 10 March 2004 from the Permanent Representative of Guatemala to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I am writing in response to your letter dated 16 January 2004 concerning the questions and comments made on the supplementary report submitted by the Government of Guatemala in accordance with paragraph 6 of resolution 1373 (2001). In this regard, I am pleased to transmit to your Committee the fourth report on measures taken by the Government of Guatemala in order to fulfil the commitments made in the aforementioned resolution (see enclosure).

Please note that, in order to meet the deadline for its submission set by the Committee, this report does not cover paragraphs 1.5 and 1.10. As soon as the competent authorities of Guatemala have agreed on matters concerning those provisions, we will transmit the respective replies.

(*Signed*) Gert **Rosenthal**
Ambassador
Permanent Representative

Enclosure

Fourth report of Guatemala pursuant to United Nations Security Council resolution 1373 (2001)

1. Implementation measures

Effectiveness in the protection of the financial system

1.1 Regarding subparagraph 1 (a) of the resolution, the CTC would be grateful for an outline of the draft Act for the prevention and suppression of the financing of terrorism which, according to the third report (page 9), is ready to be submitted to Congress. The CTC would further be grateful to receive an outline and progress report on the enactment of the draft act that, according to the third report (pages 5 and 6), will specifically deal with counter-terrorism.

Reply of the Government of Guatemala

This draft has already been submitted to the Congress of the Republic, where it was introduced in the Plenary on 8 April 2003 and referred to the Public Finance and Currency Committee, which issued a favourable ruling on its content. Currently, the draft Act is pending discussion on third reading, and it is hoped that it can be adopted during the current legislative session.

The draft Act for the prevention and suppression of the financing of terrorism contains the following provisions:

(a) Chapter I covers the purpose of the Act (art. 1), establishing the offence of financing of terrorism as a crime against humanity. Furthermore, it provides a broad definition of what is understood by terrorism for purposes of the Act (art. 2);

(b) Chapter II describes the offences of financing of terrorism and smuggling of funds in cash, establishing penalties commensurate with the seriousness of those acts, for both natural and legal persons. Additionally, special aggravating circumstances are established for public employees and civil servants committing those offences and the rules for confiscation of property are established;

(c) Chapter III provides that the procedures and precautionary measures shall be governed by the provisions of the Act against the Laundering of Money or Other Assets, Decree No. 67-2001 of the Congress of the Republic. It continues to allow the immediate freezing of assets, giving special authorization to the Ministry of Finance;

(d) Chapter IV contains provisions on extradition, refugee status and asylum, subject to constitutional principles and the international treaties Guatemala has signed and is signing in this area;

(e) Chapter V covers a regime for mandated persons in accordance with the provisions of the Act against the Laundering of Money and Other Assets and its Regulation, in its original version. The draft establishes a special regime for individuals (real estate agents, notaries, public accountants and auditors, among others) who might be vulnerable to being used in the financing of terrorism, who are solely required to transmit information pursuant to a legal request. This chapter also

expands the scope of action of the Banking Commission's Special Inspectorate, indicating that it shall be the body with responsibility for administrative supervision of the observance of the law, and to this effect it is given the same authorizations, functions and attributes as are conferred on it by the regulations against laundering of money or other assets;

(f) Chapter VI establishes the procedures in the area of international cooperation, both legal and administrative, aligning them with those already established in the regulations against laundering of money or other assets;

(g) Finally, Chapter VII contains transitional and final provisions, including the establishment of corresponding regulations as proposed by the Banking Commission.

1.2 Effective implementation of subparagraphs 3 (d) and (e) requires States to accede to and fully implement conventions and protocols related to terrorism. Guatemala state in its third report (page 5) that it has ratified the International Convention for the Suppression of the Financing of Terrorism and therefore recognizes it as law. In order effectively to implement many of the twelve conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 1999, in addition to becoming a Party, a State may need to enact specific domestic legislation. This is usually necessary even in legal systems that place treaty law in a superior position to domestic law, because certain requirements of these conventions and protocols cannot be fulfilled without the enactment of the necessary domestic legislation. The CTC would, therefore, be grateful for an indication of the steps that Guatemala intends to take in this regard.

Reply of the Government of Guatemala

The draft Act for the Prevention and Suppression of the Financing of Terrorism, mentioned above, has as its objective the implementation of the provisions of the International Convention for the Suppression of the Financing of Terrorism, in accordance with domestic law, mainly with regard to:

(a) Definition of the crime of financing of terrorism (articles 2 and 4 of the Convention; covered in article 4 of the draft Act);

(b) Liability of legal entities (article 5 of the Convention, covered in article 7 of the draft);

(c) Exclusion of circumstantial justifications (article 6 of the Convention, covered in article 6 of the draft Act);

(d) Measures for the seizure and confiscation of assets (article 8 of the Convention, covered in articles 9, 10 and 12 of the draft Act and articles 11 and 12 of the Act against the Laundering of Money or Other Assets, Decree No. 67-2001 of the Congress of the Republic);

(e) Extradition (articles 9 and 11 of the Convention, covered in articles 13 and 14 of the draft Act; and article 27 of the Political Constitution of the Republic);

(f) Mutual legal assistance (articles 12 to 15 of the Convention, covered in article 21 of the draft Act);

(g) Transfer of persons (article 16 of the Convention, covered in article 22 of the draft Act);

(h) Prevention measures in the financial system (article 18 of the Convention, covered in articles 15, 16 and 17 of the draft Act, and articles 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30 of the Act against the Laundering of Money or Other Assets, Decree No. 67-2001 of the Congress of the Republic);

(i) Measures concerning the cross-border transportation of cash (article 18, paragraph 2 (b) of the Convention, covered in article 25 of the Act against the Laundering of Money or Other Assets, and article 8 of the draft Act);

(j) Exchange of information (article 18, paragraph 3 of the Convention, covered in articles 21 and 23 of the draft Act).

It is important to indicate that the draft Act is also aimed at the implementation of United Nations Security Council resolution 1373 (2001) and the eight special recommendations of the FATF on Financing of Terrorism.

1.3 Effective implementation of subparagraph 1 (a) of the resolution requires States, inter alia, to impose an obligation on banks, financial institutions and other financial intermediaries to report suspicious transactions to the relevant authorities. Guatemala stated in its third report (page 4) that articles 18 and 26 of the Act against Laundering of Money or Other Assets, Decree No. 67-2001, govern the obligation imposed on banks and financial institutions to report unusual and suspicious transactions to the Controller of Banks. The CTC would be grateful to know what steps Guatemala intends on taking in order to impose the obligation to report suspicious transactions to other financial intermediaries.

Reply of the Government of Guatemala

Articles 18 and 26 of the Act against the Laundering of Money or Other Assets govern the obligation of banks and financial institutions to report suspicious transactions. However, the persons under that obligation are not restricted to the aforementioned sectors, in accordance with the provisions of article 18, mentioned above, which states:

> "Article 18. Mandated persons. For the purposes of this Act, the following are considered to be mandated persons:
>
> (1) Entities subject to monitoring and inspection by the Banking Commission;
>
> (2) Natural or legal persons engaged in brokerage or intermediary activities in the negotiation of securities;
>
> (3) Entities which issue and operate credit cards;
>
> (4) Offshore entities operating in Guatemala, defined as entities engaged in intermediary financial activities which are constituted or registered under the laws of another country, and which carry on business primarily outside its jurisdiction;
>
> (5) Natural or legal persons carrying out any of the following activities:
>
> (a) Regular or substantial cheque encashment operation;

(b) Regular or substantial issuing, sale or purchasing of travellers' cheques or money orders;

(c) Regular or substantial transfers of funds and/or mobilization of capital;

(d) Factoring;

(e) Financial leasing;

(f) Foreign exchange dealing;

(g) Any other activity which by the nature of the operations concerned can be used to launder money or other assets, as established in the regulations."

It is important to note that article 18, subparagraph 5 (g) permits the inclusion in the category of mandated persons of natural or legal persons who conduct any activity which, by the nature of the operations concerned, can be used to launder money or other assets, which may be given effect through the issuance of a governmental decision by the President of the Republic. This mechanism, which was approved under Governmental Decision No. 438-2002 of 11 November 2002, was implemented to include savings and credit cooperatives as new mandated persons.

Article 15 of the draft Act for the Prevention and Punishment of the Financing of Terrorism establishes the same list of mandated persons as that contained in article 18 above. Article 15 of the draft Act states:

"Article 15. Mandated persons regime. The same persons established as being mandated persons in the Act against the Laundering of Money or Other Assets, its Regulations and other provisions on the matter shall also be considered mandated persons for the purposes of this Act. To that effect, the same regime of duties, obligations, know-the-customer policies and restrictions shall be applicable to them as the one established in that Act.

The mandated persons referred to in this Act, which have been registered as such, have mandated appointed compliance officers and have drawn up registers of clients and employees in accordance with the legislation against the laundering of money or other assets, shall simply extend the measures of control, prevention and other requirements established in that legislation to include the prevention of the financing of terrorism.

The compliance officers designated by the mandated persons in conformity with the legislation against the laundering of money or other assets shall extend their duties and responsibilities to include the observance of the legislation against financing of terrorism.

The use of the fines imposed through the implementation of this Act or other applicable provisions shall be governed by the legislation against the laundering of money or other assets."

Article 16 of the draft Act governs the reporting of suspicious transactions relating to financing of terrorism. This article states:

"Article 16. Reporting of suspicious transactions. Mandated persons shall report promptly and with due diligence to the Banking Commission, through the Special Inspectorate, any transaction which has no apparent lawful

purpose, or when there is suspicion or reasonable grounds to suspect that funds are linked to or can be used to finance terrorism.

To this end, mandated persons shall apply the procedures established for that purpose in the Regulations governing this Act, and in their absence, the legislation against laundering of money or other assets, including with respect to the registration of unusual transactions not reported to the competent authorities."

1.4 Regarding subparagraph 1 (a) of the resolution, the third report from Guatemala (page 4) indicated that the Special Audit Office (the Financial Analysis Unit) has introduced forms which are used by banks and financial institutions to identify persons who register transactions in excess of US$ 10,000, and to report unusual or suspicious transactions. The CTC would be grateful to receive information on whether the Special Audit Office (Financial Analysis Unit) or another competent authority has jurisdiction to impose sanctions or penalties for failure to comply with the reporting obligations.

Reply of the Government of Guatemala

The Banking Commission through the Special Inspectorate (Financial Analysis Unit), in observance of articles 21, 24 and 26 of the Act against the Laundering of Money or Other Assets, introduced forms to be used by mandated persons. In the case of failure to meet the requirements laid down by the legislation, the Banking Commission, through the Special Inspectorate, has the authority to impose administrative penalties in the form of fines ranging between US$ 10,000 and $50,000, commensurate with the gravity of the offence.

Article 31 of the Act reads:

"Article 31. Procedure and penalties. The mandated persons referred to in article 18 of this Act shall be answerable for failure to comply with the obligations imposed by it, and shall be punished by the competent administrative authority with a fine of between US$ 10,000 and US$ 50,000 or its equivalent in national currency, depending on the gravity of the act. They shall also be bound to comply with the unsatisfied obligation giving rise to the penalty within the time limit set by the competent authority, and without prejudice to any criminal responsibility incurred."

In addition, articles 32 and 33 of the Regulations governing the Act against the Laundering of Money or Other Assets, Governmental Decision No. 118-2002 of the President of the Republic, state:

"Article 32. Imposition of penalties. Penalties for violation by the mandated persons of any of the provisions of the Act shall be imposed by the Banking Commission. For this purpose, the Banking Commission shall define the parameters to be taken into account in determining the gravity of the violation and in imposing the appropriate penalty.

"Article 33. Procedure for the imposition of penalties. When the Banking Commission, through the Inspectorate, detects a violation, it shall give a hearing to the mandated person concerned within a period of 10 days, to enable

the latter to put forward its case and the evidence it wishes to submit in its defence.

"When the time limit has elapsed, whether or not the hearing has been completed, a decision shall be made as the law requires, and shall be notified. The penalties imposed on mandated persons shall not exempt them from complying with the unsatisfied obligation giving rise to the penalty, within the time limit set for that purpose in the decision concerned."

The same authority is conferred on the Banking Commission, through the Special Inspectorate, with regard to the financing of terrorism in accordance with articles 19 and 20 of the aforementioned draft Act for the Prevention and Suppression of the Financing of Terrorism.

1.5 Subparagraph 1 (c) of the resolution requires States to freeze without delay the funds or other economic resources of persons or entities who commit, attempt to commit, participate in or facilitate the commission of terrorist acts. In its second report (page 4), Guatemala indicated that the freezing of funds is done by a judge at the request of the Public Prosecutor. Where there is *periculum in mora* (danger of delay), the freezing is done by the Prosecutor General. A judge or court, however, must confirm such an order, immediately. The CTC would appreciate receiving an indication of whether Guatemalan authorities are empowered to freeze assets of persons and entities involved in terrorist acts at the request of other States.

Effectiveness of counter-terrorism machinery

1.6 Guatemala indicated in its third report (page 7) that it has ratified 10 of the international conventions and protocols against terrorism, and that their implementation is being taken into consideration in the draft anti-terrorism act and the draft act for the prevention and suppression of the financing of terrorism. The CTC would be grateful to receive an outline of the relevant provisions of the two draft acts and a progress report on their enactment.

Reply of the Government of Guatemala

A summary of the draft Anti-Terrorism Act follows. Due to the recent change of government and to the reorganization of the agencies responsible for security, the draft is still being processed within the Ministry of Foreign Affairs and has not been submitted to the legislature.

The purpose of the draft Act is to punish severely all acts of terrorism since they are considered crimes against humanity with major impact on society, represent a threat to national and international security, destabilize legitimately established Governments, undermine society and have adverse effects on the social and economic development of democratic States.

The draft anti-terrorism act is composed of a body of norms to ensure prevention of acts of terrorism, maintain strict security controls through the establishment of the National Council for Counter-Terrorism Security, whose membership and functions are aimed at the prevention and control of terrorism, with the support of its Executive Secretariat, which has also been established, and the cooperation of State bodies and agencies.

The structure of the draft act is described as follows:

Title I
Legal regime governing the Act

General provisions

Title II
Purpose and definitions

(a) Terrorism
(b) Financing of terrorism
(c) Terrorist activities
(d) Support
(e) Acts of terrorism
(f) Terrorists
(g) Terrorist groups
(h) Informants

Title III
Offences and penalties for terrorist crimes that affect the constitutional order and public order

- Crimes affecting the constitutional and public order
- Terrorist groups
- Illegal use of information
- False alarms

Crimes against land, maritime and air security

- Acts against persons, transportation and facilities
- Use of prohibited or restricted areas
- Illegal construction, concealment and operation of landing strips
- Illegal construction, concealment and operation of mooring sites

Financing of terrorism

- Financing of terrorism
- Special cases of financing of terrorism
- Financial institutions
- Tracking of financial transactions concerning terrorism

Customs and migration

- Illegal entry
- Contracting
- Misrepresentation
- Special cases of customs fraud
- Special cases of smuggling through customs

Use of weapons, munitions and explosives

- Weapons, munitions and explosives
- Control of chemical and biological agents
- Control of nuclear and radiological agents

Aggravating circumstances

(a) Aggravating circumstances

Title IV
Special provisions and their application

National Council for Counter-Terrorism Security

- Establishment
- Membership
- Functions
- Crisis management committees

Executive Secretariat of the National Council for Counter-Terrorism Security

- Establishment
- Requirements
- Regulations
- Budget

Inter-institutional cooperation

- Cooperation

Procedures

- International legal assistance
- Informal assistance
- Criteria of expediency
- Confiscation
- Criminal proceedings

Regimes for the application of the offences covered by the Act

- Informants
- Reformed terrorists
- Scope of the investigation

Cooperation between States

- Mutual legal assistance
- Early warning
- Exchange of information
- Competence of judges
- Supervision of handing over of persons
- Extradition
- Refugee status

- Enforcement of sentences
- Asylum

Precautionary measures

- Prohibition of the application of alternative measures

Derogations and final provisions

1.7 In its third report (page 33) Guatemala indicated that the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf are intended to be submitted to the Congress of the Republic for approval. The CTC would appreciate a progress report on the ratification of these international instruments as well as the enactment of legislation and other necessary arrangements to give them effect under Guatemalan domestic law.

Reply of the Government of Guatemala

Regarding the ratification process for the Convention and the Protocol, the respective measures have been taken to send them to the Office of the President, which in turn will submit them to the Congress of the Republic for adoption.

Effectiveness of customs, immigration and border controls

1.8 Effective implementation of paragraph 2 (g) of the resolution requires States to prevent the movement of terrorists by effective border controls. Guatemala indicated in its first report (at p. 12) that there are under-monitored areas along its border that allows unofficial cross-border movement of persons. The Counter-Terrorism Committee would be grateful to receive an outline of measures Guatemala intends to take in order to ensure that terrorists do not move across its borders.

Reply of the Government of Guatemala

With a view to taking concrete steps to coordinate bilateral cooperation in the area of monitoring and control, the Governments of Guatemala and Mexico have signed a memorandum of understanding on the establishment of the High-Level Border Security Group (GANSEF) in order to secure their shared border. The Group was established on 11 October 2002. Its work plan includes activities in the areas of immigration, human rights and border matters, international terrorism, organized crime and judicial cooperation, and public safety.

The following summarizes the structure and functioning of GANSEF:

Structure

The general coordinator of GANSEF for Guatemala is the Ministry of the Interior and, for Mexico, the Secretary of the Interior.

Objectives

To prevent, along the two countries' shared air, sea and land borders: shipments of arms and ammunition; drug trafficking and related crimes; illicit

trafficking in persons, goods and services; the transfer of species of flora and fauna or items relating to cultural heritage; activities related to international terrorism; and any other dangerous activities which could give rise to violence.

Make the border zone a secure area with development possibilities through cooperation to protect persons and property, human rights and the environment.

Ongoing exchange of information on progress and experience on security-related matters so that the border region will be a secure area with development potential.

Coordinate the development of measures to improve security in the issuing and quality of identity and travel documents, in order to avoid the falsification, alteration or illicit use of such documents.

Strengthen customs controls in the legally established exit ports between both countries, whether land, sea or air, in order to ensure that international shipments of arms, ammunition, explosives and sensitive materials have point of origin and final destination documentation.

Work plan

1. Migration and human rights policies
    - 1.1 Migration
    - 1.2 Human rights
    - 1.3 Farm workers
2. International terrorism
3. Organized crime
    - 3.1 Drug-related activity
    - 3.2 Arms transfers
    - 3.3 Transfers of species and cultural heritage
    - 3.4 Transfers of vehicles
    - 3.5 Seizures at border points.
4. Public safety
5. Customs
    - 5.1 Trade-related matters
    - 5.2 Corruption

GANSEF Subgroup II, responsible for matters relating to international terrorism, has been instructed to develop a bilateral project on a general protocol on coordinated security operations at official and unofficial border crossing points and to submit that project for consideration at the High-Level Group plenary as soon as it has been completed.

In addition to the work of GANSEF, in another forum, the VIIIth meeting of Mexico-Guatemala Binational Commission, the delegations of Guatemala and Mexico agreed to add security issues to their agenda, with a view to increasing cooperation in dealing with border issues such as terrorism, transnational organized crime (including youth gangs, or "maras"), which require a coordinated and comprehensive approach.

They agreed to develop a bilateral programme for the prevention of terrorism which would include efficient exchange of information and early warning measures in order to ensure an appropriate response on the part of the authorities of both countries to terrorism-related incidents.

They reiterated their desire to strengthen joint cooperation for the purpose of effectively combating drug trafficking, organized crime and human trafficking. They also made a commitment to establish mechanisms for exchange of information between the authorities of both countries and to undertake joint actions to combat those crimes.

They expressed concern at the continued violence and drug trafficking along their common border and declared their determination to combat crime in that region. To that end, they will modify current cooperation mechanisms with a view to coordinating activities and adopting any measures required by the situation.

1.9 In the context of paragraph 2 (g) of the resolution, please outline legal provisions that govern the granting of citizenship in Guatemala.

Reply of the Government of Guatemala

Adult Guatemalans 18 years of age or more are considered to be citizens.

The procedure for obtaining Guatemalan nationality through naturalization is clearly explained in the Nationality Act, Decree No. 1613 of the Congress of the Republic.

The Nationality Act outlines two different processes for obtaining Guatemalan nationality: for individuals from Central America and Belize, and for nationals of all other countries. In both cases, the process is an individual one.

Procedure for obtaining Guatemalan nationality for citizens of the Central American countries and Belize

Guatemalan nationality may be requested in a written petition submitted to the Ministry of Foreign Affairs. Upon receipt of the petition, the documentation is reviewed and the petitioner is notified that he must confirm his request and comply with any additional requirements if the petition is not complete. Subsequently he is granted a hearing at the Office of the Attorney General of the Nation.

Based on the response of the Department of Judicial Affairs of the Directorate General for Judicial Affairs, International Treaties and Translations of the Chancellery and on the decision of the Office of the Attorney General, the Ministry of Foreign Affairs takes a decision on the petition and notifies the petitioner of the result.

Requirements for processing a request for the granting of citizenship

1. The petition must contain the full family and given names of the petitioner, his age, nationality, marital status, profession or position, and mailing address.

2. The petitioner must be of legal age and the request is personal. The petitioner may not be represented by a third party and only persons of sound mind and body may make a request.

3. Citizens of a Central American country must base their request to be declared a citizen of Guatemala on article 145 of the Political Constitution of the Republic.

4. Citizens of Belize must base their request to be granted Guatemalan citizenship on transitional article 19 of the Political Constitution of the Republic.

The following documents must be provided with the petition:

1. Foreign resident certificate, issued by the Directorate General for Migration, which expressly indicates that the individual is currently registered, or a certificate issued by the Directorate to that effect.

2. Foreigner's certificate of domicile, issued by the appropriate civil registry.

3. National identity card, issued by the embassy or consulate of the country of origin.

4. Valid foreign passport.

5. A certificate issued by the Supreme Court of Justice of Guatemala stating that the petitioner has no criminal record.

6. A certificate issued by the Directorate General of the National Police of Guatemala stating that the petitioner has no police record.

7. A duly notarized certificate provided by the authorities of the country in which the petitioner resided during the previous five years, stating that the petitioner has no police record.

8. Proof of sufficient means for his subsistence.

9. Except in cases of an exemption granted on the basis of international reciprocity, proof of payment of the annual tax on foreigners (Directorate General of Migration).

Procedure for obtaining Guatemalan nationality through naturalization

Individuals who are not citizens by birth or origin of the other countries of the Central American Federation (Costa Rica, El Salvador, Honduras, Nicaragua), or Belize or covered by international treaties to which Guatemala is a party, must submit a request for Guatemalan nationality through naturalization.

A request to become a naturalized Guatemalan citizen must be made to the departmental governments, which shall be responsible for seeing the process through to the end. Once a request is complete the departmental government which received the request transmits it to the Ministry of Foreign Affairs. An incomplete file will be returned to the departmental government in question to be completed. Once the file is complete, a hearing is granted by the Office of the Attorney General of the Nation.

Based on the recommendation of the Ministry of Foreign Affairs and the decision of the Office of the Attorney General of the Nation, the file is transmitted to the General Secretariat of the Presidency of the Republic, to be considered by the President, who takes a decision on whether or not to issue an order granting

Guatemalan citizenship by naturalization to the petitioner. Once a decision has been taken, it is published in the Official Gazette.

The governmental decision itself does not grant Guatemalan citizenship through naturalization, because citizenship must be conferred in a special ceremony organized by the Ministry of Foreign Affairs at which the petitioner first renounces his foreign citizenship and swears loyalty and allegiance to Guatemala. Upon the granting of citizenship, the new Guatemalan citizens are provided with documents certifying their citizenship and with the corresponding attestations to have their names removed from the registry of resident foreigners and added to the civil registry as naturalized Guatemalan citizens.

Requirements for processing a request

1. The petitioner must be registered as a resident foreigner, which implies that he or she holds a valid permanent resident visa issued by the Directorate General of Migration.

2. The petitioner must have been a resident foreigner for at least five years preceding submission of the request, and must not have left the national territory during that period for more than six consecutive months or periods which, taken together, add up to a year or more.

3. The petitioner must be of legal age and the petition is personal. He may not be represented by a third party and only individuals of sound mind and body may submit a request.

Requirements for the petition

1. The petition must be submitted to the governor of the department in which the petitioner is domiciled.

2. It must include the family and given names, in full, of the petitioner, his age, nationality, marital status, profession or position and a current mailing address.

3. He must indicate the legal basis for his request, in particular, article 146 of the Political Constitution of the Republic and the appropriate paragraph of article 33 of the Nationality Act.

The following documents must be provided with the petition:

1. Foreign resident certificate, issued by the Directorate General of Migration, which expressly indicates that the individual is currently registered, or a certificate issued by the Directorate General to that effect.

2. Foreigners' certificate of domicile, issued by the respective Civil Registry.

3. Citizenship card, issued by the embassy or consulate of his country of origin.

4. Valid foreign passport.

5. Certificate issued by the Supreme Court of Justice of Guatemala stating that the individual has no criminal record.

6. Certificate issued by the Directorate General of the National Police of Guatemala stating that the individual has no police record.

7. A duly notarized certificate provided by the authorities of the country in which the petitioner resided during the last five years, stating that the petitioner has no police record.

8. Record of border crossings issued by the Directorate General of Migration proving that the petitioner has not been absent from the country for a greater period of time than that set out in article 33 of the Nationality Act.

9. A certificate proving that he has a profession, skill or position which affords him a decent standard of living.

10. The names of three persons ready to sponsor him, in accordance with the provisions of the Nationality Act.

11. Except in cases of exemption based on international reciprocity, proof of payment of the annual tax on foreigners (Directorate General of Migration).

Other steps to be carried out by the departmental government

1. Test the petitioner's knowledge of the Spanish language and civic duties. The language exam shall be of a practical nature, in order to establish whether the individual can understand, speak and write Spanish; the civics examination will be on the basic geography and history of Central America and general knowledge of the Political Constitution of the Republic of Guatemala.

2. Request that the Directorate-General of the National Civil Police investigate and report on whether the petitioner has been of good conduct and has a profession, skill or position which affords him a decent standard of living.

Order publication of the petition three times in a period of 30 days in the Official Gazette and another widely circulated newspaper.

Controls to prevent the supply of weapons to terrorists

1.10 Effective implementation of subparagraph 2 (a) of the resolution requires States, inter alia, to eliminate the supply of weapons to terrorists. Guatemala stated in its third report (page 6) that the draft amendments to Decree-Law 39-89 on arms control are still being processed by the legislature, and that moves are under way to improve the control provisions of the amendments. The CTC would be grateful to have an outline of the draft amendments to Decree 39-89 and a progress report on its enactment.

1.11 The CTC is aware that Guatemala may have covered some or all of the points in the preceding paragraphs in reports or questionnaires submitted to other organizations involved in monitoring international standards. The CTC would be content to receive a copy of any such report or questionnaire as part of Guatemala's response to these matters as well as details of any efforts to implement international best practices, codes and standards which are relevant to the implementation of the resolution.

2. **Assistance and guidance**

2.1 The CTC wishes to emphasize once more the importance which it attaches to the provision of assistance and advice in connection with the implementation of the resolution.

2.2 The CTC's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee again encourages Guatemala to let it know if there are areas in which assistance or advice might be of benefit to Guatemala in its implementation of the resolution of any areas in which Guatemala might be in a position to offer assistance or advice to other States on the implementation of the resolution.

2.3 The Committee reiterates its desire to maintain and develop the constructive dialogue, which it is already engaged in, with the Government of Guatemala. If the Government of Guatemala believes that it could benefit from discussing aspects of the implementation of the resolution, including the provision of assistance, with the CTC's experts, including the CTC's assistance experts, it is welcome to contact them as mentioned in paragraph 3.1 below.

2.4 The CTC notes that the Government of Guatemala has requested assistance in connection with the implementation of the resolution in the following areas:

Counter-terrorism legislation
Financial law and practice
Customs law and practice
Extradition law and practice
Police and law enforcement work
Illegal arms trafficking

2.5 As regards Guatemala's request for assistance to the CTC, the CTC's Technical Assistance Team notes that Guatemala has received technical assistance in legislation drafting and its further requests for assistance and advice have been circulated to other potential assistance providers which are in a position to provide assistance. The CTC also notes that its Technical Assistance Team has met with a representative of the Government of Guatemala to discuss these potential sources of assistance and advice.

2.6 Further as regards Guatemala's need for assistance in the area of Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT), the CTC points out that the Government of Guatemala may request technical assistance directly from the IMF/World Bank joint AML/CFT programme. In particular, such assistance may include the drafting of legislation relating to AML/CFT, including cases where the Government of Guatemala already has draft legislation and wishes it to be reviewed for compliance with resolution 1373 and the provisions of the International Convention for the Suppression of the Financing of Terrorism.

The Government of Guatemala may take advantage of the benefits of this programme by writing directly to the IMF, preferably by e-mail, or by fax, requesting technical assistance addressed to:

The International Monetary Fund
700 19th St. N.W.
Washington, D.C. 20431

With respect to AML/CFT matters, in particular, strengthening financial sector supervision:

Mr. R. Barry Johnston
Assistant Director
Monetary and Exchange Affairs Department
E-mail: bjohnston@imf.org
Fax: 202-623-7830

With respect to legislative and legal issues, including operation of a financial intelligence unit:

Mr. Jean-Francois Thony
Assistant General Counsel
Legal Department
E-mail: jthony@imf.org
Fax: 202-623-4292

2.7 At this stage of its work, the CTC will focus on requests for assistance that relate to Stages "A" and "B" matters. However, the assistance to be provided by one State to another on any aspect of the implementation of the resolution is a matter for agreement between them. The CTC would be grateful to be kept informed of any such arrangements and on their outcome.

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Letter dated 3 March 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 November 2003 (S/2003/1057). The Counter-Terrorism Committee has received the attached third report from the Islamic Republic of Iran submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 3 March 2004 from the Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

With reference to your letter dated 10 October 2003, I have the honour to transmit herewith the third report of the Islamic Republic of Iran prepared in response to the questions formulated by the Counter-Terrorism Committee (see enclosure).

(*Signed*) Mehdi **Danesh-Yazdi**
Ambassador
Chargé d'affaires, a.i.

Enclosure

Answers to questions 1.2 to 2 of the letter dated 10 October 2003 on the consideration of the Government of the Islamic Republic of Iran with regard to the implementation of the Resolution 1373:

Answer to Q1.2:

The Anti-Terrorism Bill was finalized on 19th November 2003 by the Cabinet of Ministers and has been submitted to the Parliament for final ratification. This Bill is composed of 3 chapters (general concepts and definitions, jurisdiction and rules of court and penalties) and 23 articles. In the first chapter, (general concepts and definitions) having defined Terrorism, different cases of terrorist crimes, on the basis of international conventions, have been specified. According to this draft Act, every deliberate violent act against internationally protected persons, sabotage in public and private assets and facilities, dangerous acts against aviation and airliners security, hijacking, wrecking and damaging vessels, financing terrorism, etc, has been criminalized. Also in this draft act, the method of recognizing groups and organizations as terrorists has been formulated. In the second chapter (jurisdiction and rules of court) legal proceeding of criminals convicted to terrorist acts has been defined. In the third chapter, penalties for these criminals have been defined. According to article 24 of the draft Act, for enforcement of this Bill and coordinating among concerned authorities for prevention and provisions of suppression of terrorist crimes, the National Anti-Terrorism Committee, composed of all competent authorities under the auspices of Supreme National Security Council will be established. Also based on article 25, Ministry of Justice, in coordination with the National Anti-Terrorism Committee, and in a 90 days period after ratification of this Act in the Parliament, will finalize the rules of procedure of this Act and will submit it to the Cabinet of the Ministers.

The Bill against money laundering is composed of 8 articles. In this Bill, money laundering has been defined as crime and the cases have been specified. According to this Bill a supreme council for fighting against money laundering will be established under the office of the First Vice-President with the membership of all departments whose obligations have been identified in this Bill. In other provisions of this Bill, individuals, institutions and organs covered by this Bill have been specified. In the last article, details of cooperation with other countries on fighting against money laundering have been defined. Consideration of this Bill in specialized commission of the Parliament has been concluded and the bill will be submitted to the plenary for final ratification.

Answer to Q1.3:

In the Islamic Republic of Iran, different laws and regulations monitor and control economic transactions and activities of monetary and financial institutions as well as intermediaries, aimed at preventing suspicious transactions. Some of the most important provisions are as follows:

- According to regulations and circulars of the Central Bank and the Council of Money and Credit, all banks and financial institutions, public and private, must report to their superiors every illegal or suspicious transaction or account. In this respect, preemptive regulations against money laundering in financial institutions, passed by the Council of Money and Credit which are all binding, set forth obligations as follows:

- In article 1, in addition to defining money laundering, suspicious transactions have been defined. Based on article one's note, these regulations apply to financing terrorist activities, as declared by the relevant departments.

- In article 2, financial institutions are bound to monitor all their clients transactions in order to detect suspicious transactions.

- Based on article 3, financial institutions are bound to ascertain the identity of their clients. In articles 11, 12 and 13, procedure of ascertainment of identities, public and private, has been defined.
- According to article 7, financial institutions must produce specific circulars on the implementation of these regulations, including reporting of suspicious cases and arranging training courses for the staff to recognize and prevent suspicious operations.
- In chapter 5 of these regulations (articles 17 to 24) under "suspicious banking operations and reporting them", reporting mechanism on suspicious cases has been elaborated. According to article 18, the Central bank, will immediately report suspicious cases to concerned authorities. According to article 21, reports on suspicious operations must include following details:
  1- Type of operation.
  2- Date, time and amount of transaction.
  3- Particulars and address of the person who has done the transaction.
  4- Particulars of the transaction beneficiary.
  5- Account numbers used for transaction or the operation.
  6- Evidence of suspicion.
- Based on article 21 subparagraph, the Central Bank of the Islamic Republic of Iran has to present a special form for the reports defined in these regulations.
- Financial institutions, based on information and circulars from authorities concerned, such as Supreme National Security Council, will take appropriate measures with respect to special cases, including suspicious cases of terrorism, regardless of legality or illegality of their financial operations.
- According to regulations relating to monetary and financial operations and based on articles 92 and 98 the Third Comprehensive Program for Economic, Social and Cultural Development of the Islamic republic of Iran, adopted on 6th April 2000, monitoring of financial institutions is a duty of the Central Bank of the Islamic Republic of Iran.
- According to article 42 of the monetary and banking Act, foreign currencies transactions and every banking operation aimed at transferring foreign exchange or money order, or transfer of local currency in and out of the country without observing Central Bank regulations is banned. According to this Bill, upon request of the Central Bank, the Attorney-General could issue an order to temporarily close down the violating institution. In case of the Central Bank's complaint, violating institutions may be sentenced to penalties such as provisional or permanent closure.
- The Central Bank of the Islamic Republic of Iran regularly issues precautionary warning through public media to prevent suspicious economic transaction.
- The General Auditing Organization, as the sole authority to audit the accounts of public corporations, in addition to auditing the financial records as official ombudsman, should report possible violation cases. Bearing in mind the large volume of private sector financial operations, this organization has engaged expert accountants for auditing them. Accordingly, the Auditing Organization is capable of chasing suspicious transactions.
- Under article 4 of the draft Bill against money laundering, which is under consideration in the Parliament, notary offices, lawyers, auditors, Ministry of Justice official experts and legal ombudsmen and all entities like banks, monetary and credit institutions, Islamic interest-free funds, foundations, charity organizations and municipalities must implement the regulations laid down by Anti-Money Laundering Supreme Council.
- Under second subparagraph of article 24 of Anti-Terrorism Act, institutions as well as civil and military organizations, upon request by National Anti- Terrorism Committee, are duty-bound to take all appropriate measures to prevent and fight against terrorist crimes, including immediate blocking of the

accounts belonging to terrorist individuals and groups and report their measures to the above-mentioned Committee.

- Under article 73 of the law regulating the activities of the notary offices and association of official registrars, passed in 1975, the afore-mentioned offices are audited by the organization of registry of deeds and real estates or association of heads of notary offices or special panel designated by Ministry of Justice or representatives of Ministry of Economy and finance. Financial activities of notary offices must be audited every six months.
- Chapter 6 of the Act of Registry of Deeds and Real Estates, passed in 1921 and its subsequent amendments, under the title of "crimes and penalties", has laid down the possible crimes committed by deeds and real estates offices, including registration of forged or fake documents (article 100) and penalties of perpetrators. Under article 102 of this Act, staff of these offices must ascertain the identity and eligibility of parties and applicability of this Act.
- According to article 2 of the Act of establishing the auditing organization, passed in 1981 and its amendments in 1996, the organization is the relevant organization for ongoing audit of all ministries, governmental departments, military and law-enforcement forces, public institutions, municipalities, notary offices, charity organizations, revolutionary institutions and organizations whose establishment has been fully or partly financed by the government or the government monitors their activities or offer assistance to them and all organizations that applicability of this act to them requires mentioning of their names.

Answer to Q1.4:

- Under current laws and regulations in the Islamic Republic of Iran money transfer among individuals, including by Hawalah, is carried out solely through banking network and non-bank credit institutions, whose operations is under control and is monitored by The Central Bank.
- According to banking and monetary regulations e.g. articles 3 and 11 of the regulations for preventing money laundering by financial institutions, passed by the Council of Money and Credit, ascertainment of identity both in individuals and entities is a prerequisite of all banking and financial operations including Hawalah.
- All monitoring, controlling and reporting mechanisms on suspicious operations, provided in money laundering prevention Act, addressed in answering previous question applies to Hawalah too.
- In addition to current regulations on Hawalah, the Central Bank has redirected to commercial banks the SWIFT recommendations to shift from MT 100 messaging to MT 103. In MT103, details of originator/remitter of Hawalah must be clearly pointed out.
- All banking and monetary operations by non-profit financial institutions e.g. Islamic interest- free funds are under supervision of the Central Bank.

Answer to Q1.5:

- The Ministry of Foreign Affairs distributes regularly the updated list of 1267 Committee in relation to Al-Qaeda and Taliban, among relevant authorities (members of National Coordination Committee). These authorities at the shortest possible time distribute this list to their subordinate departments for consideration and necessary measures. This list is also distributed among banking and financial institutions on a regular basis.
- Under current laws and regulations in the Islamic Republic of Iran, the Judiciary, especially prosecutors, has been empowered to deal with suspicious financial operations including the authority to freeze blocking bank accounts and confiscating assets generated from crimes.
- Article 1 subparagraph of the regulations for preventing money laundering by financial institutions which is mandatory, applies to financing terrorism upon declaration of relevant authorities.

- Suppression of financing terrorism and confiscating assets generated from terrorist activities has been provided specifically in Anti-Terrorism Act under following points:
- Under subparagraph 10 of article 3 of Anti-Terrorism Act, every deliberate measure for financing terrorist crimes including opening account, directly or indirectly, or providing credit and donation, financial facilities, smuggling foreign exchange, money and non-negotiable documents transfer and other economic activities have been criminalized.
- According to article 21 of the Act, in addition to penalties, terrorist groups will be disbanded and all their assets and accounts will be confiscated to the benefit of the government of the Islamic Republic of Iran.
- Under article 24 second subparagraph of Anti-Terrorism Act, institutions and civil and military organizations, upon request by National Anti- Terrorism Committee, are under obligation to take all appropriate measures to prevent and fight against terrorist crimes, including immediate freezing of the accounts belonging to terrorist individuals and groups and to report their measures to the above-mentioned Committee.
- In the practice of the Islamic Republic of Iran on signing legal assistance agreement with other countries a sample form is used. Article 20 of that form provides for confiscating assets generated by crime, if requested by other party. (Supplementary explanation will be presented in answering question 1/9).
- Should a country or international institution present enough details and evidence on suspicious funds, applicable for Iran's court system, blocking these funds through legal procedure may be considered.
- The whole process of sending out updated information of 1267 Committee to financial institutions until they receive appropriate warning and freeze the account could take approximately one month.

Answer to Q1.6:
- First chapter of fifth section of Islamic Penal Code begins with the crimes which are against internal and external security and the word security in the entire text applies to both internal and external security. Articles 512 and 516 Islamic Penal Code, therefore, applies to Iran's external security as well and any action damaging Iran's diplomatic relations endangers Iran's external security.
- Under the Punishing Perpetrators of Crime against Foreign Countries Act, operating from Iran's territory against foreign countries has been criminalized and is subject to prosecution.
- In article 610 of the Islamic Penal Code, penalties against perpetrators of crime against internal and external security and facilitators for these crimes have been laid down.
- Under article 20 of the Anti-Terrorism Act, founders, leaders and members of terrorist groups and those masterminding terrorist operations, regardless of their perpetrating in any crime, would be subject to 5 to 20 years of imprisonment.
- Under clause 1 of article 5 of the Islamic Penal Code, any Iranian or alien who perpetrate an act against the Islamic Republic of Iran and its internal/external security, territorial integrity and independence and then she/he is found in or extradited to Iran shall be put to trial.
- Articles 20 to 23 of the Anti-Terrorism Act also covers clause A. under these articles, founding, leading and membership in terrorist groups is a penalized crime. Property and assets of these groups would be confiscated. Accomplice in terrorist crime is also penalized.

Answer to Q1.7:
- The Islamic Republic of Iran, based on nationality of detainees, makes intelligence contacts to the respected countries and based on assessing Al-Qaeda threat and methods of confronting it, exchanges intelligence with effective countries in the region, in Europe and in other regions.

- The Islamic Republic of Iran, in line with security cooperation and fight against organized crimes, has entered into bilateral arrangements with a number of countries. List of these countries appeared in the second report of the Islamic Republic of Iran on Resolution 1373 (S/2002/266).

Answer to Q1.8:
According to article 155 of the Islamic Republic of Iran's constitution, granting refugee status to criminals by the government is illegal. Also based on clauses A and g of article 1 of the Geneva Convention on Refugees, passed in 1951 and joined by Iran in 1974, this convention does not apply to those who have committed war crimes and crime against peace and humanity. On this basis article 5 of executive order on refugees, passed in 1966 does not apply to those who have financed, planned, supported or perpetrated terrorist crimes.

Answer to Q1.9:
- As described in response to question 1.5, under clause 1 of article 5 of the Islamic Penal Code, any act against the Islamic Republic of Iran and its internal/external security, territorial integrity and independence has been criminalized. Consequently any operation from Iran's territory against foreign countries causing any risk for independence and external security of the Islamic Republic of Iran has been criminalized and is subject to prosecution.
- Under article 4 of the Islamic Penal Code, if a part of a crime takes place in Iran and its consequence occurs outside Iranian territory or part of a crime is committed inside or outside Iran and its consequences occur inside Iran, it shall be considered as a crime committed in Iran.
- Under the Punishing Perpetrators of Crime against Foreign Countries Act, operating from Iran's territory against foreign countries has been criminalized and is subject to prosecution.
- Under article 1 of the Anti-Terrorism Act, perpetrating violent acts and crimes by way of terrorizing people to undermine the decisions and measures of the Islamic Republic of Iran or other countries and intergovernmental organizations are terrorist crimes and subject to prosecution.
- Under article 502 of the Islamic Penal Code the term "national security" applies to both internal and external security of the Islamic Republic of Iran and applies also to terrorist activities in Iran's territory against foreign countries.

Answer to Q1.10:
- The Islamic Republic of Iran has signed legal assistance agreement with a number of countries including Russia, Azerbaijan, Arab Republic of Syria, Turkey, Pakistan and France and based on these arrangements considers the requests from these countries. Also negotiations for the same agreement with countries such as Tunisia, Greece, Kazakhstan, Turkmenistan and South Africa have been finalized and have been submitted for the consideration of the Parliament. These agreements have been formulated based on a sample form whose article 20 reads as follows:
1- Each party, according to its domestic laws considers the request of the other party to uncover assets originated from crime in their territory and inform the interested party of any conclusion.
2- The host country, based on its domestic laws, takes necessary measures to confiscate the profits and assets produced by crime.
3- Profits and assets emanating from crime, according to provisions of these agreements will be handed over to the interested party, unless otherwise arranged between the parties.
4- Third Party's interests will be maintained according to the host party regulations.
- Criminal extradition Act, passed in 1960, provides details of extradition formalities.

Answer to Q1.11:
- Yes. Bearing in mind the answer to question 1.7, provisions of the afore-mentioned article would apply to these persons.

Answer to Q1.12:
- The bill of UN International Convention against the Taking of Hostages, 1979, has been finalized in the Cabinet of Ministers and submitted to the Parliament for consideration. Draft bills on 3 below-mentioned conventions are under consideration in the Cabinet of Ministers:
1- International Convention for the Suppression of the Financing of Terrorism, in 1999.
2- Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation, done at Rome in 1988.
3- Protocol for the Suppression of unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 1988.
- Draft bills for 3 below-mentioned conventions are under consideration in the Ministry of Foreign Affairs, in coordination with related departments:
1- Convention on the Physical Protection of Nuclear Material, in 1980.
2- Convention on the Marking of Plastic Explosives for the Purpose of Detection, in 1991.
3- International Convention for the Suppression of Terrorist Bombing, in 1997.
- In relation to penalizing crimes which are addressed in international instruments, but still uncovered under domestic laws, the Judiciary takes necessary steps to deal with these crimes through broader application of the existing laws such as the Islamic Penal Code.
Provisions of the 12 conventions for suppression of terrorism have been incorporated in the Anti-Terrorism Act.
The Anti-Terrorism Act and the Bill against Money Laundering which have been submitted to the Parliament are the outcome of a review of the existing laws.

2. Assistance and advice:
The Islamic Republic of Iran has done the following to utilize international experience and technical assistance with respect to the issues on suppression of financing Terrorism:

- Convening an international conference on fight against money laundering in coordination with UNDCP in Shiraz in May 2003.
- Participation of 4 Iranian experts from the Central Bank and the MFA in a seminar for suppression of financing terrorism, held jointly by UNDCP and legal department of the IMF, in Vienna in August 2003.
- A training workshop on fighting against money laundering and suppression of financing of terrorism, presented by legal department of the IMF for Iranian experts in November 2003.
- The Islamic Republic of Iran is fully prepared to hold seminars and specialized workshops for the experts of the countries in the region on different aspects of Resolution 1373. e.g. suppression of financing of terrorism and money laundering, fight against narco-trafficking, strengthening monitoring and control system in the banking network and so on.